

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

In re:

Case No. 9:03-bk-15259-ALP
Chapte 13

COREY D. MERCIER,
d/b/a MAGNUM INVESTMENT GROUP
d/b/a MAGNUM INSTANT GALLEY
d/b/a MERCIER INVESTMENT GROUP

Debtor, _____/

**ORDER ON CREDITOR'S MOTION FOR
RECONSIDERATION AND/OR REHEARING**
(Doc. No. 129)

THIS MATTER came on for consideration, ex parte, upon a Motion for Reconsideration and/or Rehearing of this Court's Order Sustaining Debtor's Objection to Allowance of Claim of Anneelena Foster (Claim No. 12) (Doc. No. 127), entered by this Court on November 23, 2004, in the above-captioned, yet to be confirmed Chapter 13 case.

The Motion for Reconsideration and/or Rehearing filed by Anneelena Foster (Ms. Foster) contends that this Court erred and improperly interpreted the applicable law, and erred in rejecting Ms. Foster's claim for priority. Although this Court previously entered an Order Denying the Motion for Reconsideration on December 3, 2004, (Doc. No. 131), it is appropriate to give specific reasons for the basis for denial and to set forth its findings announced in open Court.

This Court has considered the Motion and the record, especially the transcript of the hearing held on November 16, 2004, and is satisfied that it is appropriate to specify the grounds which formed the basis of this Court's entry of the Order disallowing the claim filed by Ms. Foster in this case.

Specifically, this Court stated on the record and found that Ms. Foster failed to establish with the requisite degree of proof that Ms. Foster is entitled to any monetary compensation for her interest in the property located in Klamath Falls, Oregon. This Court found that Ms. Foster has been, and still remains, part owner in the above-mentioned property.

Therefore, there is no basis or justification to give Ms. Foster any monetary award for her interest in a property in which she holds part ownership.

In addition, the Court also found that the record is completely devoid of any competent evidence to establish that Ms. Foster has, or had, any quantifiable interest in the 1999 Harley Davidson motorcycle, or in the vacant lots located in the Golden Gate Estates, Naples, Florida.

The priority claim asserted by Ms. Foster in the amount of \$8,600.00, requires a recap of the history of the relationship between Ms. Foster and Corey D. Mercier (the Debtor). It appears that Ms. Foster and the Debtor (the parties) met sometime in June 1990. In 1991 they established a joint household, initially in San Jose, California. Between 1991 and 1992 they moved to Oregon where they made a joint application to become foster parents. The parties were awarded custody of four foster children. Thereafter, the parties made a joint application to adopt two of the four children in their care.

The application of the parties to adopt a set of female twins was approved by the State of Oregon. The State awarded a monthly support for the children in the amount of \$800.00 per month. It is without dispute that monthly checks were received from the State of Oregon, from Federal Funds, and all checks were made payable to the Debtor. It is further without dispute that the funds received from the State were placed in a joint checking account which was maintained by the parties.

Sometime in October 2000 the parties separated and the relationship eventually derminated. In order to normalize the relationship, the parties entered into an Interim Agreement (Debtor's Exhibit 1), which was intended to last only thirty (30) days. The visitation schedule set forth in the Agreement expired. Notwithstanding this fact, the parties followed the visitation schedule in accordance with the Agreement until they entered into the Modification of Parenting Agreement (Modification Agreement) on November 4, 2002. (Debtor's Exhibit 3). The Modification Agreement of the parties set forth in detail the parties' responsibilities concerning the children, including visitation rights and scheduling activities.

It is without dispute, with the exception of \$600.00, all funds paid by the State of Oregon were received by the Debtor, and were used by the Debtor to pay for the cost of the education and recreation of the children, such as karate classes, Sunday school, and prepaid college funds. There is no question that Ms. Foster never received any part of the funds received by the Debtor from the State of Oregon, except the sum of \$600.00, and she was not reimbursed for any expenses she might have incurred while the children were in her care.

The priority claim asserted by Ms. Foster against the Debtor is based on Section 507(a)(7) of the Bankruptcy Code. While it is without dispute that the amount of monthly payments made by the State of Oregon was firm, fixed and liquidated, one must still consider the contention that her share of the money, if any, should be entitled to a priority treatment under Section 507(a)(7).

11 U.S.C. § 507 PRIORITIES

Section 507(a)(7) provides in relevant part,
(a)The following expense and claims have priority in the following order:

(7) ... allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other court of record, determination made in accordance with State or territorial law..."

It is clear from the record that there is no evidence that there was an allowed claim for debts to a spouse, former spouse, or child of a debtor, for alimony to, maintenance for, or support of such spouse or child. There is no evidence to indicate that such an allowance was made in connection with a divorce decree, separation agreement, or other order of a court of record. Even assuming, without conceding, that the monthly \$800.00 paid by the State of Oregon was pursuant to an order of a court, it could not have been entered in connection with a separation agreement or divorce decree for the simple reason that Ms. Foster was never the spouse of the Debtor, even if the laws of the State of Oregon recognized same sex marriages which, of course, are not recognized in the State of Florida.

Most importantly, the monthly payments for the care of the children from the State of Oregon which, theoretically, could have qualified for priority status, cannot qualify for priority status because the

claim asserted here is not on behalf of the children or as adoptive parent or custodian for the children, but is asserted by Ms. Foster individually. Therefore, the priority status of the claim must be rejected.

The last item under consideration by this Court is estimating and quantifying the balance of the claim filed by Ms. Foster. Ms. Foster claims that all of the monies of the parties were deposited into the parties' joint checking account. Thus, the monies in the account were not the Debtor's alone, but included Ms. Foster's share of the funds deposited. However, the problem is there is no evidence in this record that even remotely permits one to guesstimate, let alone quantify, how much of the money Ms. Foster deposited into the joint account. Equally, there is nothing in this record that warrants a finding that Ms. Foster expended a fixed firm amount for the expenses of the children while they were in her custody pursuant to the Modification of Parenting Agreement. This being the case, this Court is satisfied that Ms. Foster failed to establish with the requisite degree of proof that Claim # 12 filed by her, or any part of the amount stated in her Proof of Claim, shall be allowed and, especially, what part of the Claim shall be allowed and entitled to priority treatment pursuant to Section 507(a)(7).

Accordingly it is,

ORDERED, ADJUDGED AND DECREED that the Creditor's Motion for Reconsideration and/or Rehearing filed by Anneelena Foster (Doc. No. 129) of the Order Sustaining Debtor's Objection to Allowance of Claim of Anneelena Foster (Claim No. 12) entered November 23, 2004, (Doc. No. 127) be, and the same is hereby, granted. It is further

ORDERED, ADJUDGED AND DECREED that upon Reconsideration of the Order Sustaining Debtor's Objection to Allowance of Claim of Anneelena Foster (Claim No. 12), entered on November 23, 2004, (Doc. No. 127), the same is hereby reaffirmed and Claim No. 12 filed by Anneelena Foster be, and the same is hereby, disallowed in toto. It is further

ORDERED, ADJUDGED AND DECREED
that in light of the foregoing it is unnecessary to
estimate Claim No. 12.

DONE AND ORDERED on January 5,
2005.

/s/ Alexander L. Paskay
Alexander L. Paskay
United States Bankruptcy Judge